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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/083,422	05/22/1998	SCOTT CLARE	016325-00221	3984

21586 7590 02/11/2003

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EXAMINER

PEDDER, DENNIS H

ART UNIT	PAPER NUMBER
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3612

DATE MAILED: 02/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/083,422

Applicant(s)

Clare et al.

Examiner

Dennis H. Pedder

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jan 16, 2003
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See attached listing is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 94, 96, 97, 126, and 127 is/are allowed.
- 6) ☒ Claim(s) Remaining claims not objected and allowed (See detailed listing within) is/are rejected.
- 7) ☒ Claim(s) 57, 74, and 87 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language pr visional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 51 6) ☐ Other:

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DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 49-56, 58, 60, 85-86, 89, 92, 93, 98-99, 101, 105, 106, 108, 109, 111, 113 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hamel in view of either Powers or Douglass, Jr. US 3,068,038.

Hamel has all claimed details less the short extension of the storage area, a feature known in this art as evidenced by either Powers as can be clearly seen in figures 3 and 5, or Douglass, Jr. as can be seen in figure 3. The outward bow to the side panels can be clearly seen in figures 2 and

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3, extending from the roof. Applicant's comments are noted and a tracing of the bow is attached for applicant's edification. While the contour of the bow is unknown in the area blocked by the open rear doors in figure 2, a bow is clearly seen in the areas unblocked. It would have been obvious to one of ordinary skill in the art to provide in Hamel a storage area of slightly lesser depth relative the wheel well as taught by Powers or substantially equal depth as taught by Douglass, Jr. in order to maximize the main cargo area between the storage area.

As to claim 53, the latches can be seen in figure 1 of Hamel as can the struts, claim 56.

As to claim 108, process steps are not given patentable weight in a product claim, MPEP 2113.

3. Claims 59 and 88 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hamel in view of either Powers or Douglass, Jr. US 3,068,038 and Gallagher et al..

It would have been obvious to one of ordinary skill in the art to provide in Hamel as modified above a drain/relief valve as taught by Gallagher et al. at 18 in order to drain excess moisture.

4. Claim 91 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hamel in view of either Powers or Douglass, Jr. US 3,068,038 and Itoh.

It would have been obvious to one of ordinary skill in the art to provide in Hamel as modified above seating in the cargo area as taught by Itoh in order to use the vehicle for multiple functions.

5. Claims 61-62, 64-73 are rejected under 35 U.S.C. 103(a) as being unpatentable over

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Hamel in view of either Powers or Douglass, Jr., optionally in view of Shelby, Jr..

The wheel well of Hamel is seen partially in figures 1 and 4. The separation width and contour of the side panels are substantially the same as that of the forward cab compartment. The rear-most side door of Hamel is the cab door. It would have been obvious to one of ordinary skill in the art to provide in Hamel a storage area of slightly lesser depth relative the wheel well as taught by Powers or substantially equal depth as taught by Douglass, Jr. in order to maximize the main cargo area between the storage area.

Optionally, It would have been obvious to one of ordinary skill in the art to provide in Hamel as modified by either Powers or Douglass, Jr. a cargo area side door 12, 14 as taught by Shelby, Jr. in order to load from the side. Shelby, Jr. shows the wheel well curve on the side panel.

Allowable Subject Matter

6. Claims 57, 74, 87 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 94, 96-97, 126, 127 are allowed.

Response to Arguments

8. Applicant's arguments filed January 16, 2003 have been fully considered but they are not persuasive.

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It would perhaps be helpful to applicant to step back and consider exactly what is being argued as constituting patentable subject matter regarding the above rejected claims.

Applicant argues that a patent should be granted for:

- 1) Modifying the Hamel design patent to include a storage area of lesser depth;
- 2) Providing a bowed contour to the Hamel patent side wall;
- 3) No single prior art reference contains such details as a drain valve, rear seating, and a side access door.

Regarding 1) this is a matter of dimension, not only an obvious expedient to one of ordinary skill in the art, but well settled as not a patentable distinction.

Regarding 2) this is merely a design aspect of the invention and does not contribute to the functionality of the invention, but merely its aesthetic features. Applicant is reminded that this is a utility patent application.

Regarding 3) picking and choosing known aspects of the prior art is the burden placed on applicant, charging him/her with knowledge of one of ordinary skill in the art in order to prevent nuisance patents being issued for features that are already in the public domain. Applicant is charged with 1) knowledge of these features and 2) not to set forth, under the burden of 37 CFR 1.56, that they are the invention of applicant and thus contribute to the advance of technical knowledge.

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Conclusion


9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Pedder whose telephone number is (703)308-2178. Fax amendments to expedite handling should be sent to (703) 305-7687.

DHP

February 6, 2003


Dennis H. Pedder
Primary Examiner
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2/6/03

HAMEL Side CONTOUR
FIG. 2

